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Government of South Australia
Department of Trade and Economic
Development

COMPETITIVENESS COUNCIL INDUSTRY REVIEW

BUILDING CONSTRUCTION

Final Report

Office of the Economic Development Board

August 2008

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1. Executive Summary

The State Government established the Competitiveness Council to identify practical initiatives to improve South Australia's national and international competitiveness. One of its key responsibilities has been to lead efforts to achieve the State Government's goal of reducing red tape by at least 25% by 30 June 2008. A target of \$150 million in net cost savings has been set to fulfil this commitment.

As part of the project, the Council secretariat is consulting with industry through a series of industry reviews. This process involves accepting submissions and conducting interviews with industry representative bodies and business owners and managers. The aim is to identify logical and achievable ways to reduce the time and cost business owners currently spend in complying with State Government rules and regulations, without compromising social, environmental and economic objectives.

The third industry to be reviewed was the Building Construction Industry. This report summarises the findings of that review and lists the actions the Government has agreed to take to reduce red tape in response to both industry-specific and generic issues raised by those consulted.

Key Findings

The administrative and compliance burden experienced by the building construction industry depends partly on the nature of each business and partly on the work it undertakes. This can range from building individual residences to the construction of major projects.

Industry-specific compliance issues raised by industry – in written submissions and interviews – included:

- The South Australian planning system is considered the Number One red tape issue by builders and they want an urgent and extensive overhaul

- The Occupational Health and Safety requirements are complex and there is overlap between State and Federal requirements for the construction industry
- Various Government tendering processes require similar information for each application.
- Both members of a partnership require a licence, even if the partners are married and one is not involved in building.
- Concern that new Site Contamination legislation will add more uncertainty and cost to residential developments.
- Delays in decisions by the Native Vegetation Council are causing uncertainty.

Central to these issues is the need for Government to examine the information services provided by its agencies and find more effective ways to communicate with businesses and explain what is required by them. Detailed information about the issues put forward by industry, as well as the Government's responses, can be found in Section 7 of this report.

Two additional issues raised in interviews are worth noting, although they are not strictly regulatory issues.

- The absence of a tribunal to deal with disputes between architects, builders and clients
- Lack of awareness of the purpose of the Construction Industry Training Fund and how to access it

These issues will be discussed in Section 8 of this report.

2. Introduction

The objective of this review is to identify opportunities to reduce administrative and compliance costs associated with operating a business in building construction, or associated services, while maintaining a safe living and working environment.

3. Background

The building construction industry, broadly defined, covers residential and non-residential building construction, as well as construction trade services. It also includes businesses primarily engaged in the repair or renovation of buildings, and the installation of heating and air conditioning equipment, or electrical wiring. It also includes other specialised building trade services such as carpentry, steel erection, bricklaying, concreting, plumbing, painting, plastering, floor and wall tiling, roof tiling and the installation or laying of floor coverings (e.g. carpets or linoleum).

Table 1: Number of SA construction businesses by segment and employment size, 2003/04

Business numbers (based on ABN counts)	Building Construction (ANZSIC 411)	Non-building Construction (ANZSIC 412)	General Construction (ANZSIC 41)	Construction Trade Services (ANZSIC 42)
0-19 employing	1004	201	1205	4315
20-199 employing	n.p.	n.p.	n.p.	n.p.
200+ employing	n.p.	n.p.	n.p.	n.p.
Total (employing)	1077	235	1312	4572
Total (non-employing)	2553	743	3296	17130
Total	3630	978	4608	21702

n.p. = not available for publication

Source: ABS, Counts of Business by Industry (SA), June 2004, Cat No 8161.0.55.001

Tables 1 and 2 show that small firms are prevalent in the building construction industry in SA. Of a total of 26,310 businesses in the building construction

industry, 98.6% have fewer than 20 employees. A large number of them are officially classified as 'non-employing'.

Table 2: Number of SA construction trade services businesses in by segment and employment size, 2003/04.

Business numbers (based on ABN counts)	Site prep services (421)	Building structure services (422)	Installation trade services (423)	Building completion services (424)	Other construction services (425)
0-19 employing	348	661	1385	1190	731
20-199 employing	48	n.p.	n.p.	45	37
200+ employing	0	n.p.	n.p.	0	0
Total (employing)	396	703	1470	1235	768
Total (non-employing)	950	2796	3110	6920	3354
Total	1346	3499	4580	8155	4122

n.p. = not available for publication

Source: ABS, Counts of Business by Industry (SA), June 2004, Cat No 8161.0.55.001

The vast majority (N=21,445 or 81.5% of all building construction businesses) are classified as construction trades services and include site preparation services, building structure services, installation trade services and building completion services. This review did not include businesses providing architectural and consultant engineering services.

The building construction industry is a significant contributor to the South Australian economy. Estimated industry turnover is more than \$5 billion per year and according to the November 2007 ABS employment statistics, approximately 47,800 people work directly in the SA building construction industry.¹

The two key industry associations are the Housing Industry Association (HIA) and the Master Builders Association (MBA). A number of other relevant associations were also asked to supply contacts for the review's interview process.

¹ ABS, Labour Force, Australia, Cat No 6291.0.55.003, Table 5, Employed persons by state and industry

3.1 The Regulatory Framework

Building work can only be undertaken in South Australia with an appropriate development approval, obtained from the relevant authority via an application and assessment process. The relevant authority in most cases is the local council. The framework for development assessment and for building rules and standards in SA is provided by *the Development Act 1993* and associated *Development Regulations 1993*.

The main technical requirements are set out in the Building Code of Australia (BCA) and the South Australian Housing Code. The BCA is produced and maintained by the Australian Building Codes Board (ABCB), a joint initiative of all levels of Australian Government. The Board's membership includes representatives from the building industry.

The Building Code contains technical provisions for the design and construction of buildings and other structures, covering such matters as structure, fire resistance, access and egress, services and equipment, and certain aspects of health and amenity. The aims of the Code are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety (including safety from fire), health and amenity for the benefit of the wider community.

The activities of the building construction industry in SA are regulated under several State Acts and their supporting Regulations, including the:

- Building Work Contractors Act 1995
- Plumbers, Gas fitters and Electricians Act 1995
- Occupational Health Safety and Welfare Act 1986
- Environmental Protection Act 1993
- Workers Rehabilitation and Compensation Act 1986
- Construction Industry Training Fund Act 1993
- Housing and Urban Development (Administrative Arrangements) Act 1995

The Office of Consumer and Business Affairs (OCBA) is one of the principal South Australian regulatory agencies. It oversees consumers' contractual interests and issues occupational licences.

The Master Builders Association has been seeking a common, consistent definition of building work in all relevant Acts. It contends that all State Acts and their supporting Regulations should be complementary and administered consistently within the technical requirements of the Building Code. In 2006, the ABCB undertook a review of the Code to ensure the removal of regulations which, when assessed against Council of Australian Government (COAG) principles, were found to be redundant or overly burdensome.² Organisations responsible for the identified regulations were asked to prepare proposals for change to be discussed at COAG's national technical summit in 2008. Proposals that will reduce State/Territory variations will be given high priority.

In 2006, the SA Minister for Consumer Affairs announced a review by OCBA of the builders licensing system. Its findings were due for release in mid 2008. The Building Work Contractors Act is designed to regulate the building industry and to ensure that all builders and building industry tradespeople hold appropriate qualifications or have relevant experience. The OCBA review also looked at building indemnity insurance and discipline and compliance.

4. Methodology

As was the case in the previous industry reviews undertaken by the Competitiveness Council secretariat, this review began with desk-based research into the Government regulations covering this industry. The review team then met with representatives of the relevant industry associations who committed to providing written submissions and provided a list of business operators available for interview. The interviews took place in the first half of 2007.

² Viewed on 4 January 2008 at <http://www.abcb.gov.au/index.cfm?objectid=B298BCC1-0A49-D4F4-F60EDEF9FE9B46E>

The types of businesses interviewed varied from small independent builders, electricians and plumbers to medium-sized paving and project builders, and large commercial construction businesses.

During the review process:

- Twenty business owners/managers were interviewed on a one-on-one basis. Most of the businesses interviewed have been operating for more than 10 years;
- Officers from the Office of the Economic Development Board attended a meeting of the HIA Business Partner Network to hear first-hand about builders' experiences with Government regulation;
- Formal submissions were received from the MBA of South Australia and the HIA; and
- A number of relevant Government agencies were consulted to gain a more thorough understanding of the regulations and licences issues raised by businesses. They included SafeWork SA, the Department for Transport, Energy and Infrastructure (DTEI), OCBA, the Department of Further Education, Employment, Science and Training (DFEEST), the Department of Justice, the Environment Protection Authority (EPA) and the Department of Water Land and Biodiversity Conservation (DWLBC).

It is important to note that, in conducting interviews with industry participants, the review team did not use a prescribed set of questions but asked respondents to volunteer opinions and information about red tape issues they felt strongly about.

5. Scope

The scope of the review is to identify:

1. Steps that Government could take to:
 - Reduce the compliance burden on business (e.g. by simplifying regulations and licences that cause the biggest problems); and

- Remove or reduce any unnecessary, overlapping, repetitive or inconsistent regulation
2. Ways of using technology to reduce red tape and simplify business relationships with State Government

Regulations that impose unnecessary compliance burdens on business can impede competition, productivity and investment in South Australia. It is one of the purposes of this review that these Regulations be identified and removed without compromising their net benefits. This recognises that the State needs effective regulation to deliver the Government's social, environmental and economic goals on behalf of the community.

6. Recent SA Government Initiatives

Red Tape Reduction Plans are a major component of the Competitiveness Council's strategy to reduce the time and costs associated with Government regulation.

The Council has requested that all State Government agencies identify, develop and implement initiatives to reduce red tape to meet the target of July 2008. Plans are expected to clearly identify objectives, timeframes and measurable outcomes, including the cost savings to business in terms of reductions in time or cost, for each initiative within the plan.

The first initiative relevant to this review involves improvements introduced by the Land Services Group (LSG) within the Department for Transport, Energy and Infrastructure (DTEI). Early interviews identified delays in issuing Certificates of Titles by the LSG but it emerged that DTEI were already looking at the problem. Since then, the LSG has worked to reduce the backlog of unprocessed land titles and reduce the time taken to process titles and create new allotments. Between October 2006 and 30 June 2007 backlogs were reduced from 76 to 10 working days. This has resulted in considerable savings for industry through a reduction in holding costs based on property value, interest rate and holding period.

In early 2007, the LSG initiated its Electronic Plan Lodgement project. This included the introduction of a web-based system which enables surveying and lodgement organisations to electronically submit a variety of plans with the Lands Titles Office (LTO). They can also pay fees and view the processing status of plans lodged remotely. The first phase of the project involved the online provision of 163 LTO Forms.

The second Government initiative relevant to this review involves a reduction in the levy for the industry's long service leave scheme.

The portable long service leave scheme for construction industry workers was established in 1977 under the Long Service Leave (Building Industry) Act 1976. It is funded through investment earnings and employer levy contributions to the Construction Industry Long Service Leave Fund. It enables construction industry workers to qualify for long service leave based on service in the industry, rather than service to a single employer. The scheme benefits approximately 1700 small, medium and large employers across South Australia.

Construction industry employers are required to pay a levy based on the total remuneration of each employee. Annual assessment by an actuary has shown that the scheme is currently in a very sound financial position.

An amendment to Regulations under the Construction Industry Long Service Leave Act, 1987, reduced the levy rate from 2.5% to 2.25%, effective from 1 January 2008. This reduction is expected to save the construction industry in SA an estimated \$0.97 million annually.

7. Compliance issues

The following issues were raised by the majority of businesses interviewed for this review, as well as by both the MBA and the HIA.

7.1 SA Planning System

Issues:

- Subjective, opinion-based decision making by planners and councillors.
- Lengthy approval time frames.
- Development Plans are complicated, unclear and ambiguous.

Discussion:

The South Australian Planning System has been identified by builders as their Number One red tape issue. During interviews, builders provided examples of instances where applications for Development Plans had either not been approved or had been delayed purely on the basis that the planner and/or a councillor did not like the aesthetic design of the building/development. This was despite the fact that the application otherwise had met all requirements. Many businesses argued that the process was slow because the Development Plans were so complicated that each application needed to be assessed separately by planners. Delays in granting approvals costs the industry time and money. Industry argued for an urgent and extensive overhaul of the planning system.

Government Response:

1. *Review of the SA Planning System*

On 19 June 2007 the State Government announced the State Planning and Development Review. The Review was directed by a small, independent steering committee, reporting to the Minister for Urban Development and Planning, the Hon. Paul Holloway MLC.

Michael O'Brien MP, Parliamentary Secretary to the Premier, is the Chair of the steering committee. The committee membership includes members from the Economic Development Board, two representatives from local government, and a planning law expert.

The main objectives of the Review and the resulting reforms were to:

- establish SA as the most competitive place in Australasia in which to do business
- improve the performance, timeliness, certainty and accountability of the planning system – in both State and Local Government arenas, and
- review the role and responsibilities of Planning SA and Local Government within the overall planning system.

Issues that were raised during the consultation process for this review were passed on to the steering committee and considered as part of the Review. The State Planning and Development Review was released in June 2008.

7.2 Occupational Health Safety and Welfare

Issues:

- Understanding occupational health safety and welfare (OHS&W) requirements, and enforcing them, is difficult
- The checking and tagging of power tools is expensive and unnecessary
- Duplication of State and Commonwealth legislation on federally funded sites

Discussion:

A common theme running through the various industry reviews is that regulation will be more effective and efficient if businesses are more aware of their roles, rights and responsibilities under the regulatory framework. For example, the *Occupational Health Safety and Welfare Act 1986* is considered complex by many businesses which say they need to spend time and money to understand and comply with its administrative requirements. The Building Construction industry is no exception.

While construction businesses are provided with an OHS&W handbook and a site safety induction course pocket book, each of these runs to more than 100

pages. Businesses told the review they were either too difficult for some small builders and sub-contractors to understand, or too time-consuming to deal with.

SafeWork SA points out that the OHS&W Act has been in force for more than 20 years. When it was last reviewed in 2002, extensive discussion and consultation occurred.

In general, the construction industry appears to be well aware of its obligations under the OHS&W Act. This is due, in part, to the work of active unions and industry associations and also to information forums organised by SafeWork SA.

SafeWork SA says it has, for many years, undertaken exhaustive education programs aimed at all industry sectors but has specifically focused on construction. The benefits of reducing costs through improved OHS&W management have been discussed at length with this sector. Communication has been through forums, peak industry committees, industry associations, industry OHS&W committee meetings, site safety meetings, field days, and publications on subjects including working at heights, electrical safety and safeguard information. All compliance programs have communications strategies and industry stakeholders are consulted and informed before each program is undertaken. Safety publications, including information on electrical safety, are also given to all stakeholders during compliance activities.

By providing businesses with advice about complying with health and safety requirements, SafeWork SA says it is helping to reduce the number of injuries occurring in the workplace. This, in turn, helps businesses save the cost of higher WorkCover premiums.

The issue of the checking and tagging of power tools was also raised by some businesses. Businesses explained that electricians must check and tag power

tools every three months (at a cost of \$10 per tool) and yet, they claimed, power leads could be damaged the day after they had been checked.

SafeWork SA responded by explaining that the checking and tagging of power tools needs to be done by a competent person, not necessarily an electrician, who has done a short TAFE course (two four-hour sessions at a cost of \$165). This requirement for construction work is identical throughout every State and Territory of Australia. Since this policy was established the number of electrocutions has dropped significantly which would indicate a net benefit of the regulation. SafeWork SA agreed that communication with industry should continue to stress the benefits of this requirement and explain how businesses should comply. It also reiterated the fact that its industry education and information programs include electrical safety.

It should be noted that, during the course of the review, some businesses applauded the increase in the number of SafeWork SA inspectors and said they valued the fact that inspections were free and considered them to be of benefit to their business.

Another issue raised by businesses was their objection to the fact that contractors must comply with both the State OHS&W Act, administered by SafeWork SA, and Commonwealth legislation.

On larger construction sites, a number of agencies are involved with industrial relations and OHS&W. This is primarily due to the Federal Government's introduction over the past five years of what is, in effect, an additional OHS&W system within Australia.

SafeWork SA advises that to bid for work on projects with direct Federal funding of \$3 million or more, contractors must also comply with the requirements of the Commonwealth Australian Building and Construction Commission (web site <http://www.abcc.gov.au>). Its area of interest is primarily employment and industrial relations.

Of particular relevance to this review is the additional requirement for these contractors to be accredited with the Office of the Federal Safety Commissioner (see web site <http://www.fsc.gov.au>). This Office employs safety officers to audit and enforce compliance with its accreditation scheme. This is a Federal, not a State, requirement. SafeWork SA still has the role of ensuring compliance with State OHS&W laws on these construction sites and it is also responsible for ensuring that cooperative arrangements are in place to reduce the potential for duplication of Federal and State inspections.

The Commonwealth Government recently opened up access to national self-insurance for workers compensation through its Comcare scheme. Construction businesses opting to self insure under this scheme move from operating under State legislation to operating under Federal legislation, overseen by Comcare. As the number of constructors taking up this option increases, the result is a significant increase in the number of construction sites on which both State and Federal safety legislation applies.

The Australian Safety and Compensation Council (ASCC, formerly the National Occupational Health and Safety Commission) comprises Government (Federal, State and Territories), employer and employee representatives. It has developed and declared a national OH&S standard for the construction industry (which it identified as having the third highest incidence rates of all industries). All jurisdictions, including South Australia, are committed to adopting this national standard.

The National Standard defines obligations in greater detail and provides more certainty for construction businesses – including, for example, with respect to the development of site management plans or safe work method statements. However, SafeWork SA advises that most contractors in the construction industry, including the housing sector, already use site safety management plans in complying with State Regulations. Safe work method statements are a current requirement of the State Act and Regulations.

Government Response:**1. *Develop outcome-focused national standards***

SafeWork SA's legislative reform agenda is overwhelmingly tied to national processes and standards. The Government supports the uptake of national OH&S standards as agreed to by the Council of Australian Governments (COAG). Planned amendments to the Regulations will support nationally uniform OH&S legislation by establishing a consistent set of requirements for the construction industry (as supported by industry).

2. *User-friendly guides*

The proposed new nationally consistent construction standard will also facilitate the review of information and advisory material for the construction industry, including the adaptation of guidance material used in other nationally consistent jurisdictions.

SafeWork SA has begun producing user-friendly guides, including a risk assessment check list, to reduce the time that business has to spend in understanding regulations and standards.

3. *Establishment of the Business Efficiency Committee*

To assist in the achievement of its red tape reduction objective, SafeWork SA has established the Business Efficiency Committee, under the auspices of the SafeWork SA Advisory Committee. The role of the Committee is to advise on and identify opportunities for reducing regulatory impacts on business, while taking full account of the Government's objectives in occupational health, safety and welfare.

4. *Federal/State systems reform*

State and Federal Governments have begun discussing how to harmonise and rationalise OH&S requirements across the nation and how best to enforce them in workplaces. This could include the elimination of duplicate O&HS administration introduced by the former Commonwealth Government. This issue should be on the agenda for future meetings of the Workplace Relations Ministers' Council. It is the Government's expectation that the complex nature of the current arrangements can be simplified.

7.3 Government Tendering

Issues:

- Government tender submissions require responses to extensive questionnaires on OH&S, management, organisation, environmental procedures and quality management
- Not all tender documents for DTEI are available online
- Guidelines for the assessment of tender applications are not clear to all businesses

Discussion:

The majority of building and construction funded by the State Government is undertaken by private contractors, either building or civil engineering companies. Bids for major construction works are usually sought from pre-qualified contractors who are, in turn, responsible for engaging sub-contractors for specific trade work. Government agencies list current and future tenders on the SA Tenders & Contracts website (www.tenders.sa.gov.au) and place weekly advertisements in *The Advertiser*.

In interviews for this review, some businesses noted that Government tender submissions require responses to extensive questionnaires on OH&S, management, organisation, environmental procedures and quality management. This criticism needs to be considered in the context of the high expectations the community has for Government probity, equity and accountability when expending public monies and contracting with private sector providers. The Department for Transport, Energy and Infrastructure (DTEI) has also pointed out that only the preferred tenderer is required to submit detailed information on how the business will apply its resources and project and management systems to address the specific project needs, e.g. how it is going to manage the specific site safety, or environment issues, proposed methodologies, etc.

DTEI has reviewed all tender documents, simplified the language used, and focused on the information required at the time of tender. A DTEI contact is identified in all tender documentation, should clarification be required.

To assist in the tendering process, DTEI has established a pre-qualification process for construction contractors. Successful applicants are registered as pre-qualified contractors, which is generally a prerequisite for tendering for constructing major works. Contractors can check the SA Tenders & Contracts website (www.tenders.sa.gov.au) for available tenders. Although electronic versions of all tender documents for construction projects cannot be downloaded from this website, contractors can request that documents be sent to them electronically. To date the number of requests for this service has been minimal.

The issue of online tendering has been part of ongoing discussions between DTEI and the building construction industry. The majority of builders have consistently expressed preference for the provision of hard copy drawings and specifications. They say receiving these documents in hard copy saves them significant download time and costs (typically up to \$200 to reproduce documents for a small project and \$400 for a mid-size project).

DTEI has been discussing this and other matters in monthly meetings of the Construction Industry Forum, which comprises several industry associations as well as Government representatives. At these meetings, the associations can raise any issue of concern or interest to their members, and DTEI can communicate administrative, regulatory or legislative changes. DTEI has agreed to further discuss the potential for the electronic lodgement of tenders.

The third main issue raised in the review's interview process concerned the lack of clarity around the guidelines for the assessment of tender applications. Some businesses said they did not know whether to reduce the quality of the proposed building work to win the tender, or to focus on the quality to improve their performance rating.

Information on how tenders are assessed for building projects is included in tender documents. For example, DTEI's set of tender documents clearly outlines the specific requirements and the tender assessment criteria for the project. This is designed to ensure that all tenderers have access to complete and consistent information.

The process is as follows: The tenderer is asked for a submission which meets the stated requirements. DTEI then evaluates tender submissions in accordance with the stated criteria. During the tender period, an opportunity is provided for all tenderers to seek clarification on the tender documents. Unsuccessful tenderers can seek feedback.

DTEI has committed to using the Construction Industry Forum to provide more information about this process.

Government Response:

1. *Tender document language*

DTEI will continue to consult with the industry to review tender documents and simplify the language used.

2. *Electronic access to tender documentation*

DTEI is progressively increasing the extent of online tender documentation. Tender advertisements will include reference to documents available electronically.

3. *Communication with business*

DTEI will continue to advise and consult with industry through its websites and existing liaison mechanisms, including the Construction Industry Forum. It will also use the Forum to explain tender guidelines and the tender application assessment process.

7.4 *Partnership Licensing Requirements*

Issue:

- All members of partnerships require a licence, including non-active partners

Discussion:

The licensing of building work contractors and supervisors, the licensing of plumbing contractors and the registration of plumbing workers are integral parts of the regulatory framework. Licensees must be fit and proper persons to hold a licence, with proven qualifications and financial backing. Registered workers must have the appropriate technical competence.

Complying with the licensing and registration system clearly involves both administrative and financial costs for businesses. During interviews for this review, the necessity for licensing all members of a partnership, including non-active partners, was queried.

The Office of Consumer and Business Affairs, within the Justice portfolio, has responsibility for administering building licences under the Building Work Contractors Act. It explained that, because a partnership is not a separate legal entity, it cannot be licensed as a single entity. Therefore all partners require licences, including those in a husband and wife business partnership. In the past, OCBA has argued that unless all partners hold a licence there is a risk that the business will be controlled, or partly controlled, by a person who poses a risk to the public, or who would not qualify to be licensed.

However, the review team noted that it would be possible to amend the Act so that, in the case of a partnership, only those partners who perform building work as defined by the Act would require a licence. However, if this were to happen, some other mechanism would be needed to ensure that the business did not fall under the control of someone who posed a risk to consumers.

Government Response***Review licence requirements within partnerships***

As part of its red tape reduction program, the State Government has considered changes to licence requirements within partnerships, however, at this time the Government will not alter the requirements.

7.5 Site Contamination

Issues:

- The new site contamination legislation could add up to \$30,000 to the cost of site development
- All new residential developments will require the use of an environmental consultant
- The lack of soil contamination testing facilities in South Australia are causing further delays in the planning process

Discussion:

Until the *Environment Protection (Site Contamination) Amendment Bill* was assented to in November 2007, South Australia did not have legislation to deal with historical site contamination.³ The amended Environment Protection Act enables the Environment Protection Authority (EPA) to take action when there is a risk of harm to human health, or the environment, arising from site contamination. The Act establishes an audit system which can be called upon under the planning process when certain development occurs.

The Housing Industry Association (HIA), as well as some individual businesses, expressed concern about the impact the legislation could have on development applications. Some businesses were under the impression that every demolition would require a contamination audit report that could cost up to \$30,000. They claimed only accredited auditors could undertake these tests and that there were none resident in SA.

Site contamination is an issue of significant concern. If it is not adequately recognised, considered and addressed, there could be a risk to human health and the environment. This is could be the case where the land has been used in the past for industrial or commercial purposes (e.g. petrol stations or chemical storage facilities).

³ The Site Contamination legislation is merely making formal those existing administrative arrangements under Planning SA relating to development for sensitive land uses. Planning Advisory Notice No.20 (a notice that has been in place since December 2001) sets out planning requirements relating to contamination.

Under proposed amendments to the Development Act, where a 'sensitive land use' (all residential, preschool, primary school or childcare centres) is proposed on land where a potentially contaminating activity has been undertaken, a site contamination audit will be required. Auditors and environmental consultants are not required for new residential developments in any other situation.

The list of potentially contaminating activities is to be specified in the Regulations under the Act after consultation with key stakeholders. The HIA referred to the use of anti-termite barriers and broad-acre farming. There is no intention to include either of these as potentially contaminating activities.

The EPA acknowledges that when the site contamination legislation was assented to, only four auditors living in SA were accredited by the Victorian EPA. (A list can be found at: <http://www.epa.vic.gov.au/envaudit/auditors.asp>) However, 17 others were, at the time, undertaking audits in SA. It is anticipated that when the SA audit system becomes operational, many existing environmental consultants in South Australia – and auditors accredited in other jurisdictions – will take the opportunity to become accredited under the South Australian system. Delays to development should not then be a significant factor.

Government Response:

1. *Reduce uncertainties in the audit process*

The auditing process proposed under the Development Act will specify the minimum requirements and circumstances for which an audit is required, thereby removing the guess work and inconsistencies for planning authorities.

2. *Increase the number of accredited auditors resident in SA*

The EPA will continue to establish the new system for accrediting auditors, which should come into effect on 1 February 2009. This lead time is required for the EPA to establish the regulations, guidelines, systems and processes to support the legislation. In the interim, the EPA continues to endorse the use of Environmental Auditors (Contaminated

Land) appointed by the Victorian EPA. Their responsibility is to independently review the assessment and remediation of sites undertaken by site contamination consultants, and to assess the suitability of a site proposed for 'sensitive' or other uses.

7.6 *Native Vegetation*

Issues:

- Administrative processes and governance arrangements are unclear
- No right of appeal against decisions by the Native Vegetation Council
- Lack of integration between the Development Act and the Native Vegetation Act

Discussion:

In 1983, South Australia was the first State in Australia to introduce legislation to control the clearance of native vegetation. The Native Vegetation Act is important because less than 20% of native vegetation remains in SA's agricultural areas and in some regions less than 10% remains. One-quarter of all the plants and animals recorded in SA are considered to be threatened.

The Act covers the whole of SA, with the exception of parts of metropolitan Adelaide. Amendments in 2002 extended the Act's protection to some areas of native vegetation in the metropolitan area not previously covered, including large parts of the City of Onkaparinga that are now being developed on a large scale.

The Act establishes the Native Vegetation Council (NVC) which makes decisions on applications to clear native vegetation, and determines conditions under which that clearance may be carried out. Where the NVC grants consent to clear, the Act requires that the NVC ensures a significant environmental benefit is achieved. The landholder is consulted during the process.

Two building companies said that they did not know where to go and who to contact about these requirements. One reported that it had received local council approval to remove significant trees and understood that the council had consulted the NVC. However, it was subsequently given advice that it had to seek approval from each organisation separately.

This advice was correct. If the clearance of native vegetation is proposed, the developer/applicant must seek two approvals – one from the local council to proceed with the development; the other from the NVC, to clear the native vegetation. The only other alternative is to prove that the area is exempt under the Native Vegetation Act and, therefore, approval from NVC is not necessary.

The Regulations of the Act are administered by the Department of Water, Land and Biodiversity Conservation (DWLBC). Its website (www.dwlbc.sa.gov.au) contains information about this process. It also has a link to the NVC website (<http://www.nvc.sa.gov.au>). The latter NVC website explains the circumstances where clearance would be allowed and the process for seeking clearance approval. Contact details for both agencies, and a guide to the Regulations, are also available.

Government Response:

In early 2007, the Government undertook a review of the administration of the Act in consultation with key interest groups. In July 2007, the Minister for Environment and Conservation announced the development of a new model for native vegetation management to improve the overall relationship between native vegetation management, natural resources management and development planning.

Elements of this model include:

- enabling the NVC to focus on policy development through use of delegations to appropriate bodies

- the option for regional Natural Resources Management Boards to develop regional guidelines for native vegetation management to address regionally specific issues
- better integration of the native vegetation management and development planning systems so that biodiversity and native vegetation issues are considered earlier in the process
- working towards standardising assessment of biodiversity when considering native vegetation
- identifying and implementing ways of further cutting red tape and speeding up the decision-making process.

The Government is proposing changes to the native vegetation legislation to:

- Strengthen governance arrangements
- Increase flexibility in relation to significant biodiversity offsets
- Simplify the regulations so they can be more easily understood

In addition, the State Planning and Development Review announced on 19 June 2007 considered the relationship between the Development Act and the Native Vegetation Act.

8. Other issues raised by business

A number of issues raised by some businesses do not fall strictly into the red tape category. However, they have been included in this report because they are either causing uncertainty, or costing business time and money.

8.1 Building disputes

Issue:

- There is no tribunal to deal with building disputes

Discussion:

The review heard that building disputes, when resolved through the civil system, are generally protracted and costly matters. Consumers, builders and

architects can become embroiled in actions that require significant allocation of resources, thereby increasing the cost of the building work and diminishing the competitiveness and efficiency of its delivery. It was suggested that an independent or quasi-judicial body, such as a tribunal, could provide quick, informal and economical dispute resolution.

The Master Builders Association advocates the re-establishment of a body, similar to the disbanded Commercial Tribunal, to deal with contractual disputes emanating from building contracts. In its submission, the MBA proposes that this body be established under the jurisdiction of the Magistrates Court, and that qualified professional industry experts could be appointed to assist the magistrate in making decisions.

Government Response:

In late 2006, the Minister for Consumer Affairs announced a review of the builders licensing system in SA. The review, undertaken by OCBA, considered aspects of licensing, discipline and the District Court, contracts and the effectiveness of the building indemnity insurance scheme.

The review has since been overtaken by developments agreed by COAG. All aspects of trade licensing, including building occupations, are now a priority reform area being progressed by the Commonwealth, States and Territories through the COAG Business Regulation and Competition Working Group. COAG is considering options for how the various elements of a national system will operate.

8.2 Training

Issues:

- Lack of awareness of the purpose of the Construction Industry Training Fund and how to access it
- Uncertainty about the future of the Green Card training

Discussion:

The Construction Industry Training Fund (CITF) levy is imposed at the rate of 0.25% of the estimated value of each construction project undertaken with a

value of more than \$15,000. The levy is paid by the end-consumer of the construction services, either directly, or on their behalf, by the builder or prime contractor. Some businesses interviewed were of the understanding that training legislation no longer exists, despite the fact that they are still required to pay the levy. Some also reported that they thought accessing the fund was difficult.

The Construction Industry Training Board (CITB) is required to prepare Training Plans for submission to the Minister as one of its prescribed functions under the Construction Industry Training Fund Act 1993. The process for access training funds is clearly explained on the CITB website (www.citb.org.au). In a review of the CITF in 2004, some weaknesses were identified by the CITB, including the need for better communicating information about access to the fund.

In 2002/03, more than a third of all CIT-sponsored training places were for OH&S training, mainly for the Green Card program. To obtain a Green Card, a person undertaking construction work must have successfully completed a general safety induction course, recognised by their State authority, before starting work in any construction activity.

Since 1 January 2007, health and safety induction training completed by construction workers in Victoria, New South Wales and Queensland has been mutually recognised in each of those States. SA construction workers are required to have a Green Card but it will not be accepted interstate, nor can SA businesses accept those issued interstate, until the national standard for construction has been legislated in SA.⁴

⁴ The ASCC has the power to declare National OH&S Standards and Codes of Practice. These documents are the basis for a nationally consistent OH&S regulatory framework. The standards and codes of practice are not legally enforceable unless State and Territory governments adopt them as regulations under their principal OHS&W Acts.